IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1293 OF 2005

Shri Laxman Shivshankar Vahanbhattee ..Appellant

Versus

Smt.Mangal Laxman Vahanbhattee ..Respondent

Mr.C.S.Joshi for appellant

CORAM : P.V.KAKADE, J.

DATE : 18th OCTOBER, 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by Joint District Judge, Thane and modifying but confirming the order passed by Civil Judge, Senior Division, Thane dated 16.4.2004.

2. I have heard the learned counsel for the appellant. Perused the record.

3. The respondent-wife filed Petition under Section 18 of the Hindu Adoption and Maintenance Act for maintenance and separate residence on the ground that she was married to the present appellant in the year

1978 at Ichalkaranji, Dist. Kolhapur as per Hindu Rites. At the time of marriage the defendant-husband was in Indian Military Service and he had promised that he would take the plaintiff at the place of posting. However, it was not fulfilled. Thereafter the relationship between the parties deteriorated and the wife was compelled to file maintenance Petition NO.109 of 1982 under which the court granted the maintenance of Rs.400/= to her. In the meantime the husband filed divorce petition in Sangli Court , which was decreed. The plaintiff filed appeal in District Court and the decree was set aside. The Plaintiff wife has further submitted that the defendant had treated her with cruelty and had deserted and she had no source of income in any manner. On the other hand the defendant was in service and was drawing salary of Rs.15,000/=. Besides, that he had cloth shop, powerlooms at Ichalkaranji, joint family house and two shop premises at Thane wherefrom he was getting rent of Rs.10,000/=. He had also purchased the property in the name of one Usha Kadam and her sister, i.e. second wife, who is earning Rs.10,000/= by way of salary. On these grounds she prayed for maintenance of Rs.5000/=. The defendant resisted the claim, inter alia, denying the allegations

and sought dismissal of the suit.

. The trial judge adjudicated the dispute on merits holding that the plaintiff wife had proved that the defendant had neglected and refused to maintain her and as such granted maintenance at the rate of Rs.3000/= per month. The appeal was carried to the District Court, Thane. The Joint District Judge after hearing both sides came to the conclusion that the quantum of maintenance granted by the lower court required to be enhanced and as such he held that the proper maintenance would be Rs.4500/= p.m. and passed order to that extent. The Civil Appeal No.158 of 2004 which was preferred against the order was dismissed. Whereas Civil Appeal No.152 of 2004 was partly allowed by such order. The Plaintiff was also entitled to recover interest @ 6% p.a. until the amount is recovered.

4. At the outset, it may be noted that there is absolutely no substantial question of law involved in this appeal. The learned counsel for the appellant has vehemently urged that the courts below have not taken into account the evidence led on behalf of the husband in order to show that the petitioner-wife also had

sufficient income and was not require any maintenance from her husband. Perusal of the judgments of both the courts below make clear position that they have concurrently held that the appellant has deserted and neglected his wife and has refused to pay maintenance though she is not capable of earning anything. It is also reflected from the judgments of both the courts below that they have taken into account the available evidence on record which clearly shows that the defendant had not led any evidence to show that the wife had any independent source of income so as to refuse her maintenance amount. Be as it may, the fact remains that all the issues are issues of facts and cannot be considered as substantial questions of law. Both the courts below are seen to have properly appreciated the entire evidence on record and came to the conclusions recorded by them. It is seen from the record that the enhanced maintenance by the lower appellate court is justified by the evidence on record, as it is needless to mention that the amount of Rs.4500/= p.m. is cannot be said to be the amount with which the wife can live in lavish life. In other words, the said amount is sufficient for her and therefore, I do not intend to interfere with the order passed by the lower appellate

court.

. In the result the appeal has no merits and stands dismissed.